

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
MAY 17 2017
Clerk, U.S. District Court
District Of Montana
Missoula

BENJAMIN KARL SMITH,

Plaintiff,

vs.

OFFICER FOSSENS and OFFICER
MACHLER,

Defendants.

CV 15-13-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this matter on April 17, 2017, recommending granting Defendants' motion for summary judgment. Plaintiff Benjamin Karl Smith ("Smith") failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in its conclusion that Smith's claims are barred by the doctrine of res judicata. The parties and issues raised in this case are the exact same as those brought forward in the action filed by Smith in the Third Judicial District Court for Powell County. Smith could have raised his constitutional claims in that matter and failed to do so. Consequently, his claims in this matter are now barred.

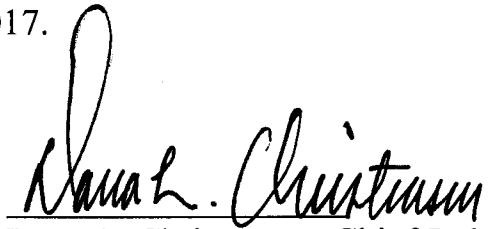
Accordingly, there being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 99) are ADOPTED IN FULL.

(2) Defendants' Motion for Summary Judgment (Doc. 91) is GRANTED and this matter DISMISSED. The Clerk of Court is directed to close the case and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

(3) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit.

Dated this 17 day of May, 2017.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looping initial "D".

Dana L. Christensen, Chief Judge
United States District Court